# Detailed Reference Guide 30: VCAT to adjudicate termination of tenancies in situations of family violence or personal violence

This reform starts on 29 March 2021.

## New requirements

A specified person may apply to VCAT for an order terminating the existing rental agreement or an order terminating the existing rental agreement and requiring the rental provider of the premises to enter a rental agreement with the person and other persons (if any) specified in the application.

A specified person is a person:

* who is a party to an existing residential rental agreement and who has been or is being subjected to family violence by another party to the existing residential rental agreement; or who is a protected person under a personal safety intervention order made against another party to the existing residential rental agreement, or
* who is residing in the rented premises as the person's principal place of residence; and who is not a party to the existing residential rental agreement; but has been or is being subjected to family violence by a party to the existing residential rental agreement; or is a protected person under a personal safety intervention order made against a party to the existing residential rental agreement.

A reference to a person who has been or is being subjected to family violence includes a protected person under a family violence safety notice, family violence intervention order or recognised non-local domestic violence order.

If a person specified above is a child, an application may be made on that child's behalf by a parent or guardian of the child who lives at the rented premises with the child.

An application may be made without the consent of the rental provider or any other party to the existing rental agreement.

Each of the following persons is a party to the proceeding:

* the applicant or the person on whose behalf the application is made,
* the rental provider,
* any other party to the existing rental agreement, and
* any other person specified in the application.

VCAT must hear an application within 3 business days of the application being made or no later than the next available sitting day of VCAT after the end of that 3 business day period.

VCAT may make an order terminating the existing rental agreement or an order terminating the existing rental agreement and requiring the rental provider to enter into a new rental agreement with the specified person and other persons (if any) referred to in the application.

To make an order VCAT must be satisfied that:

* the specified person and other persons (if any) could reasonably be expected to comply with the duties of a renter under a rental agreement,
* the specified person or that person's dependent children would be likely to suffer severe hardship if the specified person were compelled to leave the premises,
* the hardship suffered by the specified person would be greater than any hardship the rental provider would suffer if the order were made,
* if a renter of the rented premises is excluded from the rented premises under a family violence safety notice, family violence intervention order, recognised non-local domestic violence order or personal safety intervention order, it is reasonable to do so given the length of the exclusion under the notice or order and the length of the existing rental agreement, and
* it is reasonable to do so given the interests of any other renters (other than any excluded renter) under the existing rental agreement and, in particular, whether the other renters support the specified person's application.

VCAT must also consider:

* whether an application for a family violence safety notice, family violence intervention order, non-local domestic violence order or personal safety intervention order has been made by or in respect of the specified person,
* if an application for a family violence safety notice, family violence intervention order, non-local domestic violence order or personal safety intervention order has been made by or in respect of the person—
* whether there is a family violence safety notice, family violence intervention order, recognised non-local domestic violence order or personal safety intervention order in effect, or
* if there is a notice or an order in effect, whether a renter of the rented premises is excluded from the rented premises under the notice or order.
* any prescribed matters, and
* any other matter VCAT considers relevant.

When VCAT makes an order, the new rental agreement:

* is subject to the same rent and frequency of rent payments as the existing rental agreement,
* runs for a term not longer than the remainder of the fixed term agreement if the existing residential rental agreement is a fixed term agreement,
* ends on a date specified by VCAT, and
* otherwise has the same terms and conditions as the existing residential rental agreement, subject to any changes VCAT determines.

The existing rental agreement is terminated on the signing of the new rental agreement.

VCAT may also order:

* that the rental provider or that person's agent must ensure that the specified person has access to the rented premises or former rented premises to remove the person's goods,
* that the rental provider or that person's agent must not list information about the specified person on a residential tenancy database.

This reform also applies to rooming houses, caravan parks and residential parks.

## Requiring further specification

Other matters VCAT may consider when making a decision in relation to family violence or personal violence.

## Relevant legislation in the *Residential Tenancies Act 1997*

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| Section 3 | Definitions of ‘family member’, ‘family violence’, ‘family violence intervention order’, ‘family violence safety notice’, personal violence’, ‘protected person’ and ‘recognised non-local DVO’ |
| 91V | Application for termination or new residential rental agreement because of family violence or personal violence |
| 91W | Tribunal orders |
| 142S | Application for termination or new rooming house agreement because of family violence or personal violence |
| 142T | Tribunal orders |
| 206AG | Application for termination or new agreement because of family violence or personal violence |
| 206AH | Tribunal orders |
| 207M | Application for termination or new site agreement because of family violence or personal violence |
| 207N | Tribunal orders |

Note: This was Reform 93 in the Fairer Safer Housing review.